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RECEIVED
MAR 21 2012
MANAGEMENT
STB

THOMAS F. MCFARLAND

March 20, 2012

By UPS overnight mail

232081

FILED

MAR 21 2012

**SURFACE
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: STB Finance Docket No. 35612, *Manning Grain Company -- Acquisition and
Operation Exemption -- Fillmore Western Railway Company*

Dear Ms. Brown:

Enclosed please find an original and 10 copies of Verified Notice of Exemption Under 49
C.F.R. § 1150.31, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$1,800 for the filing fee.

Office of Proceedings

Part of

Public Record

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant

TMF:klenc:\np5\1533-Attstb3

FILE RECEIVED

MAR 21 2012

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

MANNING GRAIN COMPANY --)	
ACQUISITION AND OPERATION)	FINANCE DOCKET
EXEMPTION -- FILLMORE WESTERN)	NO. 35612
RAILWAY COMPANY)	

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

ENTERED
Office of Proceedings

MAR 21 2012

Part of
Public Record

MANNING GRAIN COMPANY
4 Burrell Road
Fairmont, NE 68354

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

Date Filed: March 21, 2012

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BEFORE THE
SURFACE TRANSPORTATION BOARD

MANNING GRAIN COMPANY --)	
ACQUISITION AND OPERATION)	FINANCE DOCKET
EXEMPTION -- FILLMORE WESTERN)	NO. 35612
RAILWAY COMPANY)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1150.31 *et seq* , MANNING GRAIN COMPANY (MGC), a noncarrier, hereby provides notice of its class exemption from 49 U.S.C. § 10901 for its acquisition from Fillmore Western Railway Company (FWRC) and operation of a 7.1-mile rail line between point of connection with BNSF Railway Company at Milepost 8.1 at or near Fairmont and terminus at Milepost 15.2 at or near Burress in Fillmore County, NE (The Rail Line).

EXPLANATION OF THE TRANSACTION

In June, 2001, FWRC obtained an exemption that authorized it to abandon a rail line between Milepost 8.1 at or near Fairmont, NE and Milepost 23.0 at or near Milligan, NE. *Fillmore Western Railway Company -- Abandonment Exemption -- in Fillmore County, NE, 2001* STB LEXIS 583 (Docket No. AB-492 [Sub-No. 2X], decision served June 27, 2001).

It now appears that FWRC did not file a notice of consummation of that abandonment with the Board within one year after the date of service of the decision that granted the exemption for abandonment. It also appears that there were no legal or regulatory barriers to FWRC's consummation of that abandonment. As a result, FWRC's authority to abandon that

rail line expired as of the end of that one-year period on June 27, 2002, as provided in 49 C.F.R. § 1152.29(c)(2). The effect of that expiration is that the Fairmont-Milligan rail line remained an active rail line of FWRC.

In 2005, MGC acquired a 7.1-mile segment of that rail line between Milepost 8.1 at or near Fairmont, NE and Milepost 15.2 at or near Burrese, NE (the Rail Line) from FWRC. MGC was not aware of the effect of a rail carrier's failure to file a notice of consummation of abandonment with the Board within one year of the date of service of the decision exempting abandonment, nor was MGC aware that FWRC had failed to timely file such a notice of consummation of abandonment as to the Fairmont-Milligan rail line. MGC believed that it was acquiring the Rail Line as private industrial track. In legal effect, however, MGC unknowingly became a rail carrier by virtue of its acquisition of a segment of FWRC's unabandoned Fairmont-Milligan rail line.

On March 8, 2012, Manning Rail, Inc. (MRI), a noncarrier affiliate of MGC, filed a Notice of Exemption in Finance Docket No. 35607 for its acquisition from MGC and operation as a rail common carrier of the 7.1-mile Rail Line between Fairmont and Burrese.

When Board Staff began to process that Notice of Exemption, Staff discovered that FWRC had failed to timely file a notice of consummation as to abandonment of the Fairmont-Milligan rail line. Staff representatives thereupon notified counsel for MRI of that failure and of the legal effect of that failure.

On March 14, 2012, counsel for MRI requested that the Board hold in abeyance the Notice of Exemption in Finance Docket No. 35607 pending investigation of the effect of

FWRC's failure to have timely filed a notice of consummation of the Fairmont-Milligan abandonment.

Counsel for MRI has concluded that in the foregoing circumstances, it is necessary for MGC to obtain an exemption from the Board for its acquisition from FWRC and operation of the Fairmont-Burress Rail Line, so that MRI can lawfully acquire that Rail Line from MGC and operate it as a rail common carrier.

Accordingly, MGC is hereby seeking an exemption retroactively authorizing its acquisition from FWRC and operation of the Fairmont-Burress Rail Line. MRI will request that once the Notice for that exemption has been filed, the Notice of Exemption in Finance Docket No. 35607 be reactivated.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant;

Applicant is Manning Grain Company, 4 Burress Road, Fairmont, NE 68354.

b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicant's representative is Thomas F. McFarland. Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, ph (312) 236-0204, fax (312) 201-9695, mcfarland@aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement was reached in 2005 for Manning Grain Company to acquire the Rail Line from FWRC and to operate it.

(d) The operator of the property;

The operator of the property will be MGC.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject operating authority;

The entity transferring the Rail Line was FWRC, current address unknown.

(2) The proposed time schedule for consummation of the transaction,

The transaction will be consummated no sooner than 30 days after filing of this notice with the Board.

(3) The mile-posts of the subject property, including any branch lines, and

The Rail Line extends between point of connection with BNSF Railway Company at Milepost 8.1 at or near Fairmont, NE and terminus at Milepost 15.2 at or near Burress, NE.

(4) The total route miles being acquired,

A total of approximately 7.1 miles of rail line will be acquired and operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier

Attached to this notice as Appendix 2 is a verification that MGC's projected revenues do not exceed those that would qualify it as a Class III rail carrier.

VERIFICATION

The verification attached to this notice as Appendix 2 includes a verification of all facts contained in this notice.

REVENUES LESS THAN \$5 MILLION PER YEAR

The verification attached as Appendix 2 includes a verification that the projected revenues of MGC will not exceed \$5 million per year.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

Pursuant to 49 C.F.R. § 1105.6(c)(2), no environmental documentation or report is required for the proposed transaction. Pursuant to 49 C.F.R. § 1105.8(b)(2), no historic documentation or report is required for the proposed transaction.

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), no labor protection is required for the proposed transaction.

CAPTION SUMMARY

Attached to this notice as Appendix 3 is a caption summary required by 49 C.F.R. § 1150.34.

LAND GRANT RIGHT-OF-WAY

Applicant is not aware of any land grant right-of-way in the Rail Line.

NO INTERCHANGE COMMITMENTS

There were no interchange commitments between MGC and FWRC.

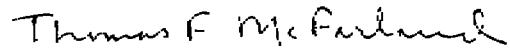
CONCLUSION

WHEREFORE, the Board should publish notice of the exemption in the *Federal Register* within 16 days of its filing.

Respectfully submitted,

MANNING GRAIN COMPANY
4 Burress Road
Fairmont, NE 68354

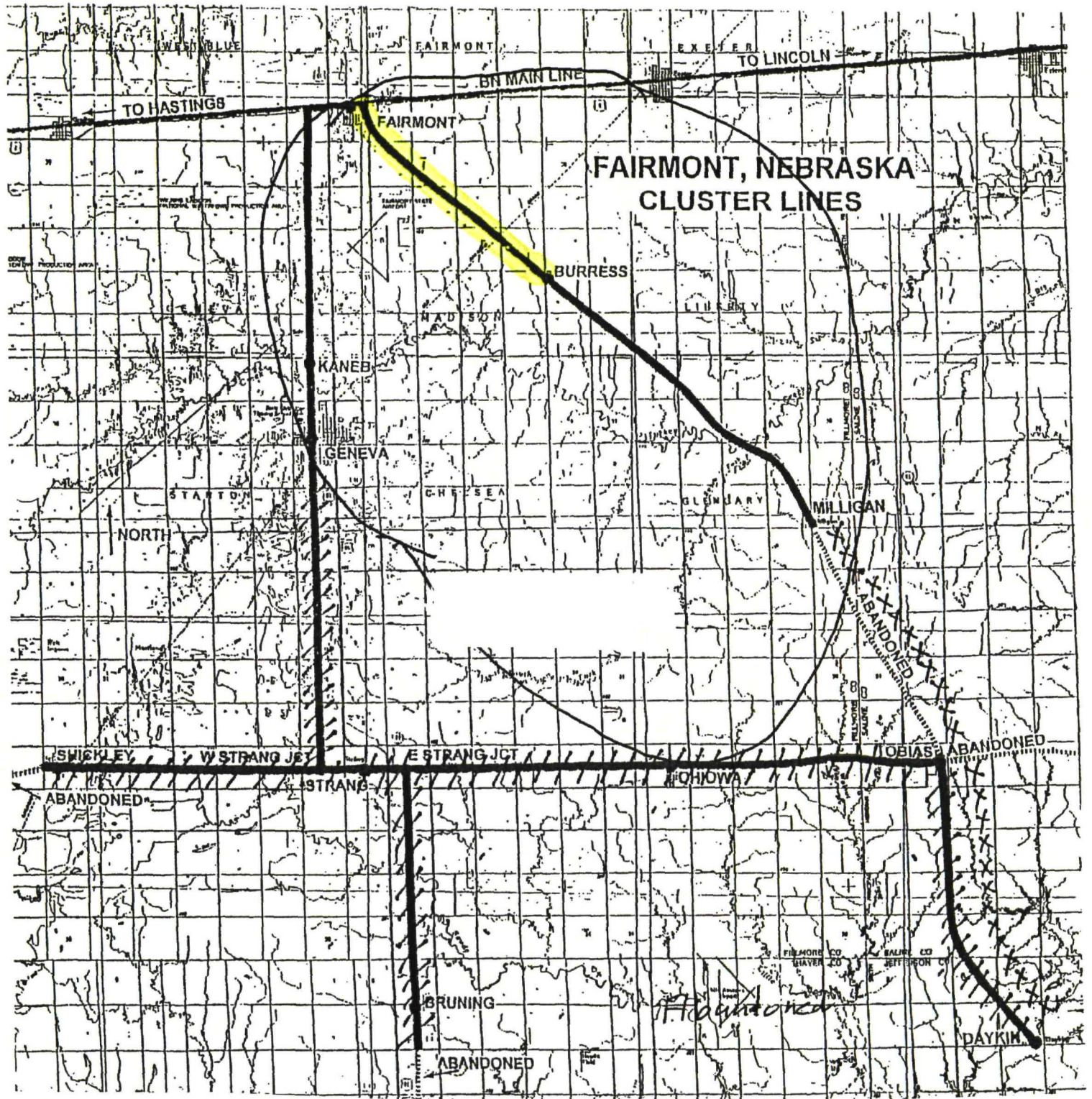
Applicant



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Attorney for Applicant

Date Filed: March 21, 2012



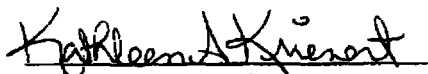
F.D. No. 35612
Appendix 2VERIFICATIONSTATE OF NEBRASKA)
) SS:
COUNTY OF FILLMORE)

KENT MANNING, being duly sworn, states that he is an authorized representative of MANNING GRAIN COMPANY (MGC); that the projected annual revenue of MGC to be created by its acquisition and operation of a rail line from Fillmore Western Railway Company will not exceed \$5 million; that MGC's projected revenues do not exceed those that would qualify it as a Class III rail carrier; and that all statements in MGC's Notice of Exemption for such acquisition and operation are true and correct.

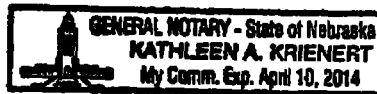


KENT MANNING

SUBSCRIBED AND SWORN to
before me this 19th day
of March, 2012.



Notary Public



My Commission Expires:

CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION**

(Finance Docket No. 35612)

**MANNING GRAIN COMPANY -- ACQUISITION AND OPERATION
EXEMPTION -- FILLMORE WESTERN RAILWAY COMPANY**

Manning Grain Company, (MGC), , a noncarrier, has filed a notice of its class exemption from 49 U.S.C. § 10901 for its acquisition from Fillmore Western Railway Company and operation of a rail line extending between point of connection with BNSF Railway Company at Milepost 8.1 at or near Fairmont and terminus at Milepost 15.2 at or near Burress, a distance of 7.1 miles in Fillmore County, NE. The transaction was to be consummated no sooner than 30 days after the filing of the notice of exemption.

Any comments must be filed with the Board and must be served on applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, ph (312) 236-0204, fax (312) 201-9695, mcfarland@aol.com.

This notice of exemption is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

(SEAL)

By the Board